

HOUSE BILL 4019
By McMillan

AN ACT to amend Tennessee Code Annotated, Title 71, chapter 5, parts 25 and 26, relative to the detection and investigation of fraud and abuse in TennCare, and the recovery of money lost through such fraud and abuse.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, part 25, shall be amended by adding the following appropriately numbered section, as follows:

Section ____.

The general assembly recognizes that data mining is an important tool used nationwide in the effective and aggressive detection of fraud and abuse in the delivery of medical assistance and medical assistance payments. Therefore it is the intention of the general assembly that:

(a) The office of inspector general shall engage in data mining of data relating to the delivery of medical assistance, medical assistance payments, and other goods and services paid for by TennCare, for the purpose of detecting fraud or abuse by recipients, providers, vendors, managed care organizations, or other persons or entities; and

(b) That the inspector general shall have prompt, continuing, and effective access to all such data in a manner that will permit effective data mining for these

purposes without imposing unduly burdensome or oppressive requirements on persons or entities that receive or provide goods and services paid for by TennCare.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 5, part 26, is amended by adding a new appropriately numbered section, as follows:

Section _____.

(a) Without regard to any other civil or criminal liability that might attach, by operation of this section or any other law, to a person, including an enrollee or applicant who obtains, or assists any person in obtaining medical assistance, medical assistance payments, or any assistance from the TennCare program, to which such person is not entitled, the office of inspector general shall have an administrative remedy for the recovery of the amount of:

(1) Any medical assistance benefits or payments improperly paid as a result of any misrepresentation or omission made by such person, to the extent that such amount has not otherwise been recovered by the TennCare bureau.

(2) Any unpaid or underpaid premiums which were assessed at a lower monthly amount than would have been set if not for the misrepresentation or omission by such person, to the extent that such amount has not otherwise been recovered by the TennCare bureau.

This action shall run against persons who improperly obtain the medical assistance or medical assistance payments, as well as against persons who knowingly benefited from the misrepresentations or omissions. All such persons shall be jointly and severally liable to the state of Tennessee.

(b) The office of inspector general shall also have a right to recover the reasonable costs of proceedings pursuant to this section, including professional fees of court reporters and hearing officers or administrative judges, the reasonable costs of investigating claims arising under this section, reasonable attorneys' fees, as well as interest on the amount owed by the person, calculated from the date that medical

assistance was improperly received or medical assistance payments were improperly paid.

(c) All costs of medical assistance, or medical assistance payments, or unpaid premiums recouped pursuant to this section, and any interest thereon, shall be paid to the TennCare bureau. All costs of proceedings, investigative costs, and attorneys' fees shall be paid to the office of inspector general.

(d) Notwithstanding any other provision of law to the contrary, administrative actions pursuant to this section shall be commenced within four (4) years after the date of discovery of the acts of misrepresentation or omissions by the state.

(e) The office of inspector general may invoke the remedy established by this section by initiating a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In an administrative action under this subsection (e), the Office of the Inspector general shall show that the amount sought to be recovered was paid in the form of medical assistance or medical assistance payments as a result of material misrepresentation or omission by the person against whom recovery is sought, that that the person against whom recovery is sought knowingly benefited from such misrepresentation or omission. The office of inspector general need not show that such misrepresentation or omission was intentional or fraudulent.

(f) The Inspector general shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act compiled in title 4, chapter 5, as are necessary to implement the provisions of this part. Such rules shall be promulgated as public necessity rules. For purposes of rendering a final order pursuant to the Uniform Administrative Procedures Act compiled in title 4, chapter 5, the inspector general is designated the agency person to review initial orders and issue final agency decisions.

(g) The office of inspector general has the authority to petition the chancery court through the attorney general and reporter or its own legal counsel for enforcement

of any final administrative order issued by the inspector general pursuant to this section. Orders issued by the inspector general shall have the effect of a final order pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The court's order of enforcement has the same force and effect as a civil judgment.

SECTION 3. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect upon becoming law, the public welfare requiring it.